

IT 95-46

Tax Type: INCOME TAX

Issue: Income Earned in Illinois/Individual Residency

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

-----  
DEPARTMENT OF REVENUE )  
STATE OF ILLINOIS )  
 ) SS#  
 v. )  
 ) Mimi Brin  
Taxpayer ) Administrative Law Judge  
-----

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayer" or "XXXXX") to a Notice of Deficiency and an Amended Notice of Deficiency (hereinafter referred to as the "Notice") issued to her on October 28, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that she failed to file an Illinois income tax return for the year ending December 31, 1992 (hereinafter referred to as the "Tax Year"). The Notice assessed tax as well as various statutory penalties and interest.

In her protest to the Notice, the taxpayer states that she was a resident of Minnesota for the tax year, moving into Illinois in 1993. She also admits that she worked in Illinois for two weeks at the end of 1992 before she actually signed a lease for living quarters in this State. Ms. XXXXX also indicated in her protest that she did not wish a formal hearing in this matter. 35 ILCS 5/908(a)

Therefore, the following issues are being heard on the information provided by the taxpayer in her protest and on the Notice itself: 1) whether the taxpayer was a resident of Illinois in the tax year; and, 2) whether the taxpayer is required to pay income tax to the State of Illinois

on income earned here.

For the reasons stated herein, I recommend that issue #1 be resolved in taxpayer's favor and that issue #2 be resolved in the Department's favor.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Amended Notice of Deficiency which indicates that the taxpayer failed to file an income tax return with the Department for the tax year ending December 31, 1992. Dept. Ex. No. 1

2. Taxpayer failed to file an Illinois income tax return for the tax year. Dept. Ex. No. 1

3. Taxpayer did not enter into a formal leasehold arrangement for living quarters until December 31, 1992, with the leasehold beginning January, 1993. Taxpayer Group Ex. No. 1 (Response to Notice of Tax Due issued April 22, 1994)

4. Taxpayer earned \$1592.94 in income in Illinois, from an Illinois company, during the tax year. Taxpayer Group Ex. No. 1

CONCLUSIONS OF LAW: This taxpayer has consistently held that she did not take residency in Illinois until January, 1993. She has done this through forwarding 1992 W-2 Wage and Tax Statements, as well as through copies of an Illinois lease and Minnesota statement of residency. As a result of this documentation, I find that Ms. XXXXX did not take residency in Illinois until January, 1993.

However, Ms. XXXXX admits in correspondence with the Department regarding the proposed assessment that she worked in Illinois from December 14, 1992 to December 31, 1992, while still maintaining residency in Minnesota. Taxpayer Group Ex. No. 1 (Letter dated January 5, 1994; Response to Notice of Tax Due). As a result of this admission, the taxpayer should have filed an Illinois income tax return for the tax year

under the provisions of Section 302 of the Illinois Income Tax Act. That section reads, in pertinent part:

Sec. 302. Compensation Paid To Nonresidents

(a) In general. All items of compensation paid in this State (as determined under Section 304(a)(2)(B) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State.

35 ILCS 5/302(a)

Wherefore, based upon the above, it is my recommendation that the Amended Notice of Deficiency be finalized to reflect Illinois income of \$1592.94 earned during the tax year by this non-resident.

Mimi Brin  
Administrative Law Judge